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# ‘Don’t Do What to Whom? A Survey of Historical-Critical Scholarship on Leviticus 18.22 and 20.13’

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UNCORRECTED PRE-PRINT—FORTHCOMING IN *CURRENTS IN BIBLICAL RESEARCH*

## **I. Introduction**

Leviticus 18.22 and 20.13 continue to play a major role in the debate about sexual ethics and the Bible. The verses have struck many interpreters as unambiguous: The Bible condemns same-sex sexual activity in no uncertain terms. The language, we are assured, is ‘clear’ (Wold 1998: 102) and ‘relatively straightforward’ (DeYoung 2015: 40; see also Gagnon 2001: 43-157, esp. 111-42). Any attempt to argue otherwise is ‘apologetic’ (Alter 2019: note on Lev. 18.22), and to some even ‘a bottle of poison’ (Wold 1998: 22-23; see also 208). A bit surprisingly, it was not until a seminal 1994 article from Olyan that these verses were given a thorough philological analysis. Olyan concluded that the laws should be understood as referring *not* to homosexuality in general but specifically to male-male anal sex. This study—alongside two other important (but non-biblicist) studies that came out at roughly the same time in the same journal (Satlow 1994; Boyarin 1995)—initiated a new era of research on how to best understand Leviticus 18.22/20.13.

The number of scholarly studies has exploded since this time: I count at least twenty-one unique proposals in the literature. The present article aims to bring these diverse perspectives into conversation (for earlier surveys, see: Norton 1977; Holben 1999; Stahlberg 2008; Hügel 2009: 67-174; Lings 2013: 195-238). Giving equal attention to all twenty-one hypotheses is not possible or advisable in this setting, so the bulk of this article will be devoted to surveying five proposals that represent the most diverse cross-section of the current historical-critical debate:

Olyan (1994), Dershowitz (2017), Stewart (2000; 2006), Töyräänvuori (2020), and Wells (2020).

The remaining sixteen views, for the most part, either constitute a distinct inflection of one of these or are no longer entertained as live options. With such a contentious subject, relevant conversations are obviously happening on a global scale. As such, this survey does not pretend to be exhaustive. While the discussion is limited to representative works in English, French, and German, it is hoped that this article will serve as a small step towards consolidating a portion of this diverse and diffuse literature.

A note on terminology: In modern usage, ‘homosexuality’ (*homosexualité*, *Homosexualität*) is understood as a *sexual orientation* denoting the preference or tendency of a person to be attracted to someone of the same sex rather than a different sex (heterosexual), or multiple sexes and/or genders (bisexual, polysexual, pansexual, etc.). While there is a tendency to heavily associate orientation with physical sex acts in which one may or may not engage, it is obviously not reducible to this. Today we naturally associate these terms within the context of loving, consensual sex acts or relationships. Of course, physical sex acts (of which there are a multitude, and if engaged in at all) represent a small proportion of what ultimately constitutes a ‘relationship’. We might also observe the peculiarly modern and arbitrary obsession with ‘sexual orientation’. As Sedgwick perceptively notes:

It is a rather amazing fact that, of the many dimensions along which the genital activity of one person can be differentiated from that of another (dimensions that include preference for certain acts, certain zones or sensations, certain physical types, a certain frequency, certain symbolic investments, certain relations of age or power, a certain species, a certain number of participants, etc. etc. etc.), precisely one, the gender of the object choice, emerged from the turn of the century, and has remained, as *the* dimension denoted by the now ubiquitous category of ‘sexual orientation’ (Sedgwick 1990: 8).

Here, too, the debate between essentialism and constructionism is extremely relevant, though far beyond the purview of the present survey. Suffice it to say, while ‘homosexual acts’ are available for historical investigation in every human era, ‘homosexuality’ is not. ‘To “commit” a homosexual act is one thing; to *be* a homosexual is entirely different’ (Padgug 1979: 14). Applying the either/or binary of ‘heterosexual’ or ‘homosexual’ to ancient material is poor historiography (see esp. Ackerman 2005: 1-30; Hügel 2009: 15-56; and Nissinen 2016; cf. Boswell 1980; Foucault 1990; Halperin 1990; Dinshaw 1999; Hossfeld 2001; White 2019). The dynamics at play in ancient literature are of a very different sort. I will therefore avoid using ‘homosexual/ity’ and, in an effort to defamiliarize the dynamics at play, utilize more cumbersome phrases such as ‘male same-sex sexual intercourse’ and the like. This is not meant to exclude female same-sex relationships from the broader discussion, but rather an attempt to reflect the reality that the biblical writings, and their traditions of interpretation, are dominated by a concern with *male-to-male* behavior.

## **II. Leviticus 18.22 and 20.13**

Leviticus 18.22 and 20.13 are rendered here as found in the MT, LXX, and several popular English, French, and German translations.

Leviticus 18.22

MT:

ואת־זכר לא תשכב משכבי אשה תועבה הוא

*wě’et-zākār lō’ tiškab miškēbē ’iššâ tô ‘ēbâ hiw’*

[And with a male you (sg.) shall not lie the beds of a woman. It is *tô ‘ēbâ*.]

LXX:

καὶ μετὰ ἄρσενος οὐ κοιμηθήσῃ κοίτην γυναικός, βδέλυγμα γάρ ἐστίν.

English:

- ‘You shall not lie with a man as with a woman. It is an abomination’. (NRSV)
- ‘Do not lie with a male as one lies with a woman; it is an abhorrence’. (NJPS)
- ‘You must not have sexual intercourse with a man as you would with a woman; it is a detestable practice’. (CEB)
- ‘Do not have sexual relations with a man as one does with a woman; that is detestable’. (NIV)
- ‘Do not practice homosexuality, having sex with another man as with a woman. It is a detestable sin’. (NLT)

French:

- ‘Tu ne coucheras pas avec un homme comme on couche avec une femme: c’est une pratique abominable’. (Bible Segond 21)
- ‘Vous ne devez pas coucher avec un homme comme on couche avec une femme; c’est une pratique monstrueuse’. (Traduction œcuménique de la Bible)
- ‘Tu ne coucheras pas avec un homme comme on couche avec une femme. C’est une abomination’. (Traduction officielle liturgique française)

German:

- ‘Einem Männlichen sollst du nicht beiliegen in Weibs Beilager, Greuel ist’s’. (Buber-Rosenzweig)
- ‘Mit einem männlichen Partner sollst du keinen Geschlechtsverkehr haben wie mit einer Frau, ein Tabu ist dies’. (Bibel in gerechter Sprache)

- ‘Du darfst nicht mit einem Mann schlafen, wie man mit einer Frau schläft; das wäre ein Gräuel’.  
(Einheitsübersetzung)
- ‘Kein Mann darf mit einem anderen Mann geschlechtlich verkehren; denn das verabscheue ich’.  
(Gute Nachricht Bibel)

Leviticus 20.13

MT:

ואיש אשר ישכב את־זכר משכבי אשה תועבה עשו שניהם מות יומתו דמיהם בם

*wě'îš 'āšer yiškab 'et-zākār miškēbê 'iššâ tô 'ēbâ 'āsû šēnēhem môt yûmātû dēmēhem bām*

[And a man who lies with a male the beds of a woman, the two of them have committed *tô 'ēbâ*.

They will certainly be put to death; their blood is upon them.]

LXX:

καὶ ὅς ἂν κοιμηθῇ μετὰ ἄρσεως κοίτην γυναικός, βδέλυγμα ἐποίησαν ἀμφοτέροι, θανατούσθωσαν, ἔνοχοί  
εἰσιν.

English:

- ‘If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death; their blood is upon them’. (NRSV)
- ‘If a man lies with a male as one lies with a woman, the two of them have done an abhorrent thing; they shall be put to death—their bloodguilt is upon them’. (NJPS)
- ‘If a man has sexual intercourse with a man as he would with a woman, the two of them have done something detestable. They must be executed; their blood is on their own heads’. (CEB)
- ‘If a man has sexual relations with a man as one does with a woman, both of them have done what is detestable. They are to be put to death; their blood will be on their own heads’. (NIV)

- ‘If a man practices homosexuality, having sex with another man as with a woman, both men have committed a detestable act. They must both be put to death, for they are guilty of a capital offense’. (NLT)

French:

- ‘Si un homme couche avec un homme comme on couche avec une femme, ils commettent tous deux un acte abominable. Ils seront punis de mort, leur sang retombera sur eux’. (Bible Segond 21)
- ‘Si un homme couche avec un autre homme comme on couche avec une femme, ils se rendent tous les deux coupables d’une action monstrueuses et doivent être mis à mort. Ils sont seuls responsables de leur mort’. (Traduction œcuménique de la Bible)
- ‘Quand un homme couche avec un homme comme on couche avec une femme, tous deux commettent une abomination; ils seront mis à mort, leur sang retombera sur eux’. (Traduction officielle liturgique française)

German:

- ‘Ein Mann, der einem Männlichen beiliegt in Webs Beilager, Greuel haben beide getan, sterben müssen sie, sterben, - ihre Blutlast ist auf ihnen’. (Buber-Rosenzweig)
- ‘Ein Mann, der bei einem männlichen Geschlechtspartner wie bei einer Frau liegt, ein Tabu haben sie beide gebrochen, sie müssen unbedingt getötet werden, ihr Blut ist auf ihnen’. (Bibel in gerechter Sprache)
- ‘Schläft einer mit einem Mann, wie man mit einer Frau schläft, dann haben sie eine Gräueltat begangen; beide werden mit dem Tod bestraft; ihr Blut soll auf sie kommen’.  
(Einheitsübersetzung)

- ‘Wenn ein Mann mit einem anderen Mann geschlechtlich verkehrt, haben sich beide auf abscheuliche Weise vergangen. Sie müssen getötet werden; ihr Blut findet keinen Rächer’. (Gute Nachricht Bibel)

While there is a measure of overlap for many of the twenty-one hypotheses, all ultimately represent distinct rationales.

Figure 1. Hypotheses on Leviticus 18.22 and 20.13

1. Same-Sex Eroticism ('homosexuality')	8. Gender Confusion (male <i>acting</i> as female)	15. Improper Mixture of Defiling Substances (semen & excrement)
2. Male Same-Sex Intercourse (both partners culpable)	9. Social Humiliation (male <i>treated</i> as female)	16. Failure to Ensure Procreation (waste of semen)
3. Sexual Intercourse between Israelite Males in The Promised Land	10. Pederasty	17. Improper Placement of Semen (i.e., <i>not</i> wastage)
4. Unrestrained Bisexuality	11. Male-Male Rape	18. Redactional Layer Clarifying Implicit Acceptance in 18.7*, 14*
5. Sexual Intercourse with Intersex Persons	12. Idolatry	19. Male Same-Sex Incest
6. The Active/Insertive Partner in Male Anal Intercourse	13. Fear of Demons	20. Ambiguous Paternity from Male-Male-Female Threesome
7. The Passive/Receptive Partner in Male Anal Intercourse	14. Male Cult Prostitution	21. Male Same-Sex Intercourse with an 'Unavailable' Man

Why the wide range? Much of the disagreement stems from the Hebrew phrase **משכבי אשה**.

English translations tend to gloss this as analogical, ‘*as one lies with a woman*’ (NJPS), but literally we have (for 18.22), ‘And with a male you shall not lie down *the beds of a woman*’ (cf.



LXX; Buber-Rosenzweig translation). Many interpreters have assumed that **משכב** connotes ‘the act of lying’ (e.g., *BDB*, *DCH*). This may be possible but, as Wells (2020) insists, the primary meaning of the noun is ‘bed’ (cf. *HALOT*). What could this mean, and why is it worthy of proscription? We can see that all translations are freely interpretive in their understanding of **משכבי אשה**, so the question before us is whether such translations are justified or whether another rendering is preferable. We will begin our survey with Olyan (1994) who, as mentioned, was the first scholar to analyze these verses with modern historical-critical and linguistic tools.

Olyan points us to what he considers an analogous phrase to **משכבי אשה** found in Numbers 31.17 and Judges 21.11, 12: **משכב זכר**. The idiom occurs in the context of a woman’s virginity (‘a woman who has/has not known [ידע] the **משכב זכר**’), and we might woodenly render this as ‘the lying down of a male’. Note here that in Olyan’s argument, **משכב** indicates the *act*, not the *place*, of lying down. ‘The lying down of a male’, in reference to what a woman experiences in Num. 31 and Judg. 21, ‘must mean specifically male vaginal penetration in these contexts’ (Olyan 1994: 184). Olyan infers that, since **משכב זכר** has a restricted usage in reference to a specific sexual act (‘vaginal penetration’), it is likewise reasonable to understand **משכבי אשה** as having a restricted usage—that is, *not* male same-sex homoeroticism in general, but a very specific sexual act. Note that whereas the idioms in Num. 31 and Judg. 21 is *singular* (lying/bed of a man), in Leviticus we have a *plural* construct (lyings/beds of a woman). Olyan notes this and admits ‘the plural *miškēbê ’iššâ* remains unexplained’ (1994: 183 n. 9). (The difference between singular and plural will play a decisive role below in the proposals of Stewart 2000 and Wells 2020.) With the inversion of ‘lying of a *male*’ to ‘lyings of a *woman*’, the idiom in Leviticus must indicate the opposite of vaginal penetration, which Olyan defines as ‘vaginal receptivity’ or ‘the act or condition of a woman’s being penetrated’ (1994: 185). But Lev.

18.22/20.13 specifies that it is two *men* involved in this act, so how should one understand ‘vaginal receptivity’ between men? (Note here that we are speaking on the assumptions of ancient conceptions of sex and gender.) The natural conclusion seems to be that male anal penetration was seen as analogous to vaginal penetration.

Olyan further argues that Lev. 18.22 is specifically addressed to the ‘insertive partner’, the penetrator and not the penetrated man. Elsewhere in Leviticus, men are commanded to not ‘lie with’ female receptive partners for various reasons (e.g., Lev. 19.20; 20.11, 12, 18, 20), so the Hebrew idiom ‘to lie with’ (שכב עם or שכב את) seems to be used ‘exclusively of insertive partners’ (Olyan 1994: 186). Indeed, the prohibition to *not* ‘lie the lying down of a woman’ with a male implies that to lie ‘the lying down of woman’ with a female is appropriate. When it comes to Lev. 20.13, the awkwardness of the verse’s syntax suggests to Olyan that the jarring shift from singular (‘the man who...’) to plural (‘they, the two of them...’) is best explained as a later redaction by whomever compiled the Holiness Code. In other words, while Lev. 18.22 and the earlier version of 20.13 were probably addressed only to the penetrator, a redactor expanded the scope of 20.13 to include both parties (Olyan 1994: 186-88; cf. Milgrom 2000: 1566-67).

The first major engagement from biblical scholarship with Olyan’s work came from Walsh (2001; see also Jennings 2005: 208-11; Sharpe 2011: 18). In an appreciative response, he built on Olyan’s philological analysis but differed in his conclusion about precisely who is being addressed. For Walsh, instead of the active partner, the law is specifically aimed at ‘a free adult Israelite [who] takes the passive sexual role of being penetrated by the other’ (2001: 208). When surveying the comparative evidence from ancient Mediterranean and Near Eastern cultures, he inverts Olyan’s view and instead insists that these laws were mostly aimed at the passive partner, whereas the active partner was only addressed in the exceptional circumstance of coercion. This

fits quite well, Walsh reasons, in honor-shame societies where male same-sex activity is premised not on gender but the social construction of masculinity (2001: 202-203).

He agrees with Olyan that the proper corollary to *משכב זכר* is *משכבי אשה*, and that the latter refers specifically to male-male anal intercourse. Walsh also notes the discrepancy between the singular *משכב* and the plural *משכבי* and suggests it might refer to multiple sex positions (Walsh 2001: 204 n. 9). We should also mention here Hügel, who—in denying a restriction to anal intercourse and defending the translation ‘wie eine Frau verschiedentlich Geschlechtsverkehre hat’—suggests that it could refer to the repeated or various ways a woman has sex (2009: 69-70 n. 352, 462-63). But whereas Olyan understands *משכבי אשה* to indicate the *act* of lying down (‘the lying down of a woman’) and thus essentially synonymous with ‘to know (sexually)’, Walsh insists the pattern is different. In Num. 31.17-18, 35 and Judg. 21.11-12, the woman either ‘knows the lying down of a male’ or ‘knows a man as to the lying down of a male’. The verbal sequence in Leviticus is distinctive with an identical verbal root repeated with a cognate adverbial accusative: ‘lie the lying down of a woman’ (*שכב + משכבי*). A number of Hebrew idioms follow this pattern (e.g., ‘to dream a dream’, ‘to sin a sin’), and Walsh notes that this construction ‘regularly describes an action performed by the subject, not the subject’s experience of someone else’s action’ (Walsh 2001: 205). A male who ‘lies the lying down of a woman’, then, could not refer to two different actors, the penetrator (who ‘lies’) and the penetrated (who experiences ‘the lying down of a woman’). Instead, it is one male who performs the lying down as a woman would lie down, and so the receptive partner. The ‘male with whom’ (*את-זכר*) you should not lie, then, is the penetrator (see also Hollenback 2017).

In a 2011 collection of essays including a reprint of his 1994 article, Olyan offers the following rejoinder to Walsh:

Though Walsh believes that it is the receptive partner who is the center of the law's concern, I find this difficult to accept given the way in which Lev 18:22 is phrased in Hebrew: '*And with a male* you shall not lie...' By implication, the addressee ('you' masculine singular) may [i.e., could *not* should] lie 'the lying down of a woman' with a woman, suggesting that it is the penetrator who is addressed, and not the receptive partner. If it were the receptive partner, why state that he should not perform the act in question with a *male*? With whom other than a male could he possibly perform it? Thus, I continue to believe that it is the insertive partner who is addressed in Lev 18:22 and mentioned in the original formulation of 20:13, with the receptive partner added to the punishment formulation of 20:13 through editorial activity at a later stage. (Olyan 2011: 54)

This response emphasizes Olyan's understanding that, on analogy with Num. 31 and Judg. 21, the idiom in Lev. 18.22/20.13 refers to what the male experiences when he penetrates a woman; so, it could not possibly refer to what a male would experience when penetrated by another male. But Walsh insists that these idioms are not the two sides of a single coin, while Olyan's argument largely depends on taking them as reverse equivalents. Walsh tries to show that Olyan's approach is flawed because of a dependence on a false analogy between incompatible idioms, and this remains unaddressed.

### **III. Male Same-Sex Anal Intercourse: Various Rationales for the Prohibition**

With a working hypothesis that Lev. 18.22/20.13 specifically proscribes male same-sex anal intercourse—whether active or passive, and whether culpability falls on one or both partners—we are now tasked with providing a reason for the law's existence. If anal sex between men is forbidden, *why*? At the time of Olyan's article, he cited several examples (Bigger 1979: 202; Levine 1989: 123; Thurston 1990: 16; Satlow 1994: 5, 6 n. 12, 9-10). The proposals have

multiplied in recent decades, and most can be understood as variations on why this may have been an issue in ancient Israelite society.

At the widest level are those who considers Lev. 18.22/20.13 to provide a blanket prohibition on all same-sex erotic behavior, what we would today term ‘homosexuality’. This would include not just anal sex between males, but all homoeroticism, whether male-male or female-female, including but not limited to genital touching; intercrural sex; kissing; marriage; perhaps even romantic emotional attachments. In short, all species of physical *and* emotional same-sex erotic behavior. At the time of Olyan’s 1994 article, he cited several examples (Smith 1967: 126; Wenham 1979: 259; Niditch 1982: 368-69; Greenberg 1988: 191; Eilberg-Schwartz 1990: 183; Biale 1992: 29), and we may add a few others (Alpert 1989: 61-70; Levine 1989: 123; Gagnon 2001; Himbaza, Schenker, and Edart 2012; Kiuchi 2007: 338-43; Zehnder 2008). A more restrictive variant of this view still utilizes the language of ‘homosexuality’ but considers the prohibition to apply only to physical same-sex activity. Such approaches may be fairly described as the ‘traditionalist’ view, but a few caveats are in order. First, though the first explicit articulation of this broad reading can be traced to the late 4<sup>th</sup> century CE *Apostolic Constitutions* (linking it to Sodom in Gen. 19), it did not become the mainstream Christian reading until the Middle Ages with Peter Damian, Peter of Poitiers, and Peter Cantor (Carden 2004: 125; more broadly, see Jordan 1998). Early Jewish views are similarly diverse and complicated (see Boyarin 1995). Both the uncertainty with and popularity of this view can be glimpsed in some of the earliest English translations. Wycliffe’s 1382 translation, for instance, offered two different renderings: ‘Thou shalt not be meddled with a man, by lechery of a woman, for it is an abomination. (Thou shalt not be mixed together with a man, like in a fleshly coupling with a woman, for it is an abomination)’ (see Lings 2013: 217-18). Second, the ideological

drives underlying arguments in support of this translation of the Hebrew text are widely varying and not all can be reduced to homophobia (cf. Alpert 1989; Levine 1989; Gagnon 2001; Marx 2011).

It should also be noted that, if Lev. 18.22/20.13 can be accurately described as articulating a universal ban on homosexual behavior—whether just anal intercourse or homoeroticism more broadly conceived—then it would constitute the only known ban of this sort among ancient Near Eastern and Classical sources, which are typically concerned with issues of class, incest, and violence (see Olyan 1994 for a brief survey). This does not seem to have tempered the confidence of many interpreters. But, if one insists that the opaque Hebrew of Lev. 18.22/20.13 really does represent an unprecedented ban on all male same-sex intercourse, the burden of proof remains high: The laws of Leviticus come from literate cultural producers, and the views found there do not always necessarily reflect Israelite culture as a whole but a limited segment (see Albertz and Schmitt 2012: 1-56). Even if we were to conclude that the most reasonable understanding of Lev. 18.22/20.13 was a blanket prohibition against ‘homosexuality’—certainly now the minority view among specialists—there is no obvious reason to assume this view would have carried the same weight in every context. The most we could say is that it represents one particular view from one segment of society. Many scholars have noted the contradictory views of sexual ethics by comparing the following: Lev. 18.9 and 20.17 forbid sex and marriage, respectively, with one’s sister. And yet in Gen. 20, we encounter Abraham’s marriage to Sarah, his half-sister, with no hint of censure. In Lev. 18.6 and 20.21, a man is forbidden from marrying the wife of his brother—in stark contradiction to the law of Levirate marriage in Deut. 25. Or compare Lev. 18.18, which forbids marriage to two sisters, with Jacob’s marriages to Leah and Rachel. We should reemphasize here not only the uniqueness

of Lev. 18.22/20.13 within the biblical literature, but also—if one insists it articulates a blanket prohibition against either ‘homosexuality’ or even male same-sex anal intercourse in general—its *sui generis* character compared with ancient Mediterranean and Near Eastern cultures. On the other hand, laws against incest (Deut. 22.30, 27.20-23), adultery (Exod. 20.14; Deut. 5.18, 22.22-27; Num. 5.11-31; Ezek. 18.6-11, 33.26) and bestiality (Exod. 22.19; Deut. 27.21) *are* found elsewhere.

A more restrictive interpretation can be found in the work of Milgrom (2000). While the verses in question provide a clear ban on all male-male anal intercourse due to ‘the fear of a stagnant birth rate’ (Milgrom 2000: 1785), he specifies that these laws were only applicable in a very unique historical situation. However one decides to understand Lev. 18.22/20.13, ‘This biblical prohibition is addressed only to Israel. Compliance with this law is a condition for residing in the Holy Land, but not elsewhere... Thus, it is incorrect to apply this prohibition on a universal scale’ (Milgrom 2000: 1786; see also 1565-70, 1785-90). Connected to this is also the explicit concern to maintain ‘holiness’ and thereby engage in behaviors that distinguish Israel from its Canaanite neighbors. Failure to do so brings ‘pollution’ (טמא) and, if left to metastasize, the land will eventually ‘spit out’ the people (e.g., Lev. 18.24-30) (see Feinstein 2014: 100-31). We should also mention that Milgrom explicitly entertains the plausibility of Stewart’s (2000; 2006) proposal (see below).

During the Medieval period, some Rabbinic writings expressed the opinion that the plural construct phrase משכבי אשה ‘lyings of a woman’ refers to multiple—i.e., male *and* female—genitalia. Thus, the prohibition was against intercourse with an intersexed person. Though it did gain a measure of popularity (see, e.g., Ibn Ezra on Lev. 18.22; b. Yebamot 8.6, 83; *Mishneh*

*Torah*, ‘Forbidden Intercourse’ 1.15), this interpretation does not, as far as I can discover, enjoy any modern support.

In Lings’s lengthy 2013 study, he makes the interesting argument that, while the underlying Hebrew certainly does not suggest it, some modern renderings may imply that Lev. 18.22/20.13 is concerned with unrestrained bisexuality. He cites as an example Peterson’s *The Message*, which renders Lev. 18.22 as follows: ‘Don’t have sex with a man as one does with a woman. That is abhorrent’. In order to highlight how much legwork the insertion of the comparative particle ‘as’ (or in French *comme*; German *wie*) is really doing in virtually all translations—a particle absent in the Hebrew text—Lings asks us to consider that in colloquial English we might massage this to mean something like, ‘Don’t have sex with a man *in the same way* you would have sex with a woman’. In other words: You are free to be bisexual but make sure to not practice the same repertoire of sex acts with a man as you would with a woman (Lings 2013: 198). As a thought experiment meant to shore up his argument, it is mixed. Lings does not cite any author, whether scholarly or popular in orientation, who advocates this reading, so it remains unclear precisely against whom he is arguing. The aim seems to be, instead, to show how misleading the insertion of a comparative particle really is, and on this point he succeeds.

At least back to Philo of Alexandria (first century CE), Lev. 18.22/20.13 has been read as referencing pederasty—that is, sexual relationships between ‘active’ adult men and ‘passive’ young boys (*Laws* 3.37-42). Luther’s translation reflects this approach: ‘Du sollst nicht beim Knaben liegen wie beim Weibe; denn es ist ein Greuel’. It is interesting to note that the 2017 revision of the *Lutherbibel* replaces *Knaben* with *Mann*. While one can find scholars in the modern era who advocate for Luther’s reading (e.g., Elliger 1966: 241), it is not widely



supported. Though today we readily condemn such relationships due to their predatory power differential, this was not a reason cited in antiquity. Philo was disgusted for multiple other reasons: The boys are ‘feminized’ both through being penetrated and because of their penchant for ‘feminine’ behavior, outfits, and makeup. All this is ‘against nature’ (*para physin*), and all the more so because the active partner’s semen is ‘squandered’ in such an arrangement. For Philo, this undercuts the entire purpose of sexual intercourse, namely, procreation (see Nissinen 1998: 95-96; Jennings 2005: 209-10).

Though not inherently linked, many interpreters have paired a concern about gender categories with procreation (Boyarin 1995; Douglas 2002: 67; Mohrmann 2004; Sharpe 2011; Brownson 2013: 269; Feinstein 2014: 174-76; cf. Deut. 22.5). As Ibn Ezra memorably put it, ‘The Male was designed “to do” [לעשות] and the Female “to be done” [להעשות]’ (Ibn Ezra on Lev. 18.22; also cited in Olyan 1994: 189). Consider, too, the specific rationale that anal sex is taboo due to its inability to ensure procreation. In other words, it is a waste of semen (see Eilberg-Schwartz 1990: 183; Biale 1992: 29; Milgrom 2000: 1785; Schenker 2003). A broader concern for male fecundity is elsewhere reflected in the fact that crushed male genitalia would disqualify men from entering the political-religious community and animals from being available for sacrifice (Deut. 23.1; Lev. 21.20; 22.24). Still, the sex laws in Lev. 18 and 20 do not seem to consistently address this concern. After all, there are no laws against other genital acts that result in ejaculation without the possibility of conception (e.g., male masturbation, *coitus interruptus*, necrophilia, male-female anal intercourse, sex with a post-menopausal woman).

One frequently finds appeals to the creation accounts of Gen. 1-3 while arguing that Lev. 18.22 and 20.13 explicitly allude to these texts. This type of approach is evident from writers on either end of the ideological spectrum—from Wold (1998: 136), Gagnon (2001: 138-39), and

Sklar (2018) to Römer (2018) and Hieke (2014: 688). However, subsequent extrapolations vary widely. Römer and Hieke, for example, conclude that these texts say nothing about our modern conception of ‘homosexuality’. For Römer, the laws reflect an anxiety about flouting ‘the patriarchal understanding of the male and female roles’ (Römer 2018: 62). Hieke, on the other hand, situates the implicit appeal to procreation within the unique socio-historical situation of the Holiness Code. The common denominator in Lev. 18, he argues, is to prevent the loss of offspring in the fledgling Persian province of Yehud. ‘There was no room for someone who evaded reproduction and did not father and raise offspring.... The living conditions are completely different today, and it can no longer be a question of “offspring at any cost”. And yet, stability, reliability, order, loyalty, and responsibility are enduring values’ (Hieke 2015: 36, 39; see further Hieke 2014: 652-90, 779-98, 1146; see also Leuenberger 2020). But we might also observe that Lev. 18.22/20.13 expresses its prohibition through the unusual linguistic pairing of a ‘male’ (זָכָר) with a ‘woman’ (אִשָּׁה). The more natural pairings are, first, זָכָר and נִקְבָּה, then אִישׁ and אִשָּׁה. The generic Hebrew term for ‘female’, נִקְבָּה, literally connotes ‘orifice bearer’, while male, זָכָר, is related to remembrance and perpetuity (Brenner 1997: 13). If Lev. 18.22/20.13 were consciously alluding to the sexed and gendered aspects of the Priestly creation account it is reasonable to expect at the very least a linguistic allusion to something like Gen. 1.27, ‘Male and female he created them’ (זָכָר וּנְקֵבָה בָּרָא אֹתָם). But it must be admitted that we lack any explicit linguistic cues or relevant explanatory clauses to point in this direction.

The question of comparative evidence from antiquity has played an important role in these conversations. Though the relevant material is admittedly sparse, we will briefly mention it (for fuller surveys see Olyan 1994; Nissinen 1998: 19-36, 57-88; Hügel 2009: 76-174; Römer and Bonjour 2016: 13-37). Among the Hittite material, for example, various forms of incest are

forbidden, including with one's own son and with animals (Hittite Laws §§187-200; *COS* 2.18:118; see Stewart 2000: 260-369; Peled 2010a). There are also some rituals that are difficult to interpret and could either cure impotence or restore social status and virility after passive anal penetration from a male (Miller 2010; Peled 2010b).

In Egypt, the evidence is similarly meager. The most frequently cited material includes the following. The *Book of the Dead* declares 'I have not had sexual relations with a boy' (*ANET* 34, A20 and B27), though it might not specify an age bracket. In the *Instruction of Ptahhotep*, the thirty-second maxim contains a warning against sex with a 'woman-boy' (*hmt*) (Parkinson 1995). The only apparently explicit narrative portrayal of male same-sex activity is found in a scene in which Seth, brother and murderer of Osiris, anally penetrates Horus, the son of Osiris (Montserrat 2011: 142-42). There is also the unique tomb of Niankhkhnum and Khnumhotep, where—in place of the usual relationship between tomb-owner and wife—two men are portrayed in what seems to be an intimate fashion: holding hands, embracing, and noses touching. Explanations have ranged from claiming they were lovers to simply twin brothers (Parkinson 1995: 62).

Here we can address the issue of 'active' and 'passive' roles in sexual intercourse. Olyan, for instance, finds an important contrast between ancient Israel—where he understands the 'penetrated' role in sexual intercourse as primarily gendered (Olyan 1994: 189: 'the bounding of receptivity exclusively to women'), and so equated with the role of a (passive) woman—and Mediterranean and Near Eastern cultures where the roles instead revolved around other factors like class, social role, and age. In the Greco-Roman context, Olyan cites evidence that adult males of the citizen class could legitimately penetrate females but also males of inferior status. To anally penetrate a male of the same class would be to shame and feminize him, an act so

serious that it was subject to severe legal penalties—sometimes for both parties (Olyan 1994: 189). Many treatments reflect this paradigm (e.g., Carr 2003: 52; Knust 2011: 141-50; Vines 2014: 80-94; Friedman and Dolansky 2015: 35; Gushee 2017). Walsh covers similar comparative territory but, given his conclusion that the passive partner is the primary addressee, he finds much more consonance between the Levitical laws and Mediterranean societies (Walsh 2001: 205-206). Since the Levitical laws are addressed in the first instance to the free male Israelite citizen, ‘The central issue in both laws is not gender confusion in general, but precisely gender confusion wherein the *free* male citizen takes on the “female” role....The male sexual role is to be the active penetrator; the passive role of being penetrated brings shame to a man (at least to a free adult male citizen) who engages in it and, in the later redactional stratum, also to the one who penetrates him. Apart from this situation, the Hebrew Bible is silent’ (Walsh 2001: 207, 208; original emphasis). A similar situation existed in Mesopotamian societies (see Nissinen 1998: 19-36, 57-88; Ackerman 2005; Römer and Bonjour 2016: 13-37).

When scholars appeal to the evidence from the comparative material they broadly agree that the anxiety reflected cannot be reduced to a broad taboo against male same-sex erotic behavior. On the contrary, sex acts between men of different status were not only allowed but even taxed (e.g., Greco-Roman pederasty) or at the very least broadly institutionalized and incorporated into specialized priestly roles. Some roles intentionally blurred the gender boundaries and seem to have involved some form of sex work (e.g., the Assyrian *assinnu*, *kurgarrû*, *kulu’u*, and *kalû*) (see Nissinen 1998: 28-36 and bibliography; Svärd and Nissinen 2018).

‘Homosexuality’ broadly conceived does not seem to have been a real concern in Mesopotamia, and the issues cannot be easily mapped on to our modern conceptions of sexuality

and gender. The concerns we find in either legal material or omen series like the *Šumma ālu* are, first of all, relatively rare, and secondly seem strictly concerned with issues of power and social class, ancient conceptions of appropriate gender roles, and maintaining the proper boundaries between these categories (Hoffner 1973: 81-90; Guinan 1997; Stewart 2000: 92-95; Peled 2010a, 2010b; Miller 2010). Sex benefited the active/penetrative party, not the passive/penetrated. Note, too, that these ancient anxieties around male same-sex anal intercourse are largely premised on misogyny.

If we find persuasive the argument that Lev. 18.22/20.13 reflect this broader anxiety around maintaining strict boundaries around class and gender roles, we can combine this with Olyan's argument that the addressee was (originally) the active partner and Milgrom's observation that H only applied to Israelites residing in the Promised Land. We might infer that violent sex is specifically at issue. By forbidding a man (אִישׁ) from penetrating another male (זָכָר), one might argue that this is strikingly similar to the coercion reflected in *Middle Assyrian Laws* §20: 'If a man has sex with his social equal (*tappāšu inīk*) and they prove the charges against him and find him guilty, they shall penetrate him and they shall turn him into a eunuch (*inikkūš ana ša rēšēn utarrūš*)'. After all, while a blanket ban against all male-male anal intercourse would be unique in the ancient Near East (rightly noted by Wenham 1991: 362), a specific prohibition against male-male rape (of the same social class) has comparative parallels. Indeed, explicitly noting this possibility goes back at least to Ibn Ezra's commentary on Leviticus (though admittedly he goes on to reject this in favor of emphasizing the guilt of the receptive partner): "They committed an abomination." Only if the penetrated was not raped' (תועבה עשו אם הנשכב איננו אנוס). Römer and Bonjour have recently entertained this as a live option (2016: 45-46), whereas Olyan had already rejected it (Olyan 1994: 195). Greenberg also

makes much of this in his approach and offers the following counter-translation of Lev. 18.22: ‘Sex for the conquest, for shoring up the ego, for self-aggrandizement, or worse, for the perverse pleasure of demeaning another man is prohibited. This is an abomination’ (Greenberg 2004: 206; see also Johnson 2012: 132-33). Whether or not one is comfortable extending our interpretation to such lengths, given the comparative evidence it is plausible that at least one of the issues reflected in Lev. 18.22/20.13 amounts to a concern about the social repercussions for either party.

We have Mesopotamian evidence for institutionalized and regulated sex work associated with the cult, and this has frequently been referred to in the literature as ‘cult prostitution’. But, as Nissinen has argued, alongside inaccurate associations with fertility cults, ‘The term “prostitution” suggests that sexual intercourse was the main function and source of income for certain cult functionaries, which is not at all certain’ (Nissinen 1998: 39; see also Panayotov 2013). That being said, a number of studies have argued that Lev. 18.22/20.13 is concerned with this species of male same-sex intercourse (Bailey 1955; McNeill 1976; Scanzoni and Mollenkott 1978; Boswell 1980: 101 n. 34; Gagnon 2001: 130; Brownson 2013: 270; Gnuse 2015: 78). In this context some have also raised concerns about idolatry with appeal to Gen. 19 and Rom. 1 (Snaith 1967; Boswell 1980: 100; see also Lings 2013: 189-90, 247-83, 514-19, 557-65). Gerstenberger even raised the striking possibility of ‘demonic fears’, though he says no more (1996: 254). Some see a reference to cultic sex in ancient Israel in Deut. 23.18-19 [Eng. vv. 17-18] (cf. 1 Kgs 14.24; b. San. 54b; Sifra Kedoshim 914 [92b]):

<sup>17</sup>None of the daughters of Israel shall be a temple prostitute [קדשה]; none of the sons of Israel

shall be a temple prostitute [קדש]. <sup>18</sup>You shall not bring the fee of a prostitute [זונה] or the wages

of a male prostitute [כלב, lit. ‘dog’; see Nissinen 1998: 41] into the house of the LORD your God in payment for any vow, for both of these are abhorrent [תועבת] to the LORD your God. (NRSV)

Probably too much has been read into this. The precise nature of these roles remains unclear and too much rests on speculation that could well be explained by other hypotheses. Additionally, there is nothing in the broader context of Lev. 18 and 20 that would suggest a restriction to the cultic sphere. Indeed, the very existence of ‘cultic prostitution’ in antiquity has come under intense scrutiny in recent years (see Bird 1997, 2015, 2019; Stark 2006; Budin 2008).

Still, concerns related to ritual and cultic purity seem present to a certain extent. Alongside social and gender boundaries, some have also pointed to worries about improper mixtures (e.g., Lev. 19.19; Deut. 22.11). Bigger (1979), for instance, observed that some of the sexual proscriptions in Lev. 18.19-23 involve the mixture of defiling bodily emissions—semen and menstrual blood (18.19); human and animal semen in a woman (18.23)—and further suggested that in 18.22 semen is ‘misused’. He does not clarify what is meant by this, but Olyan plausibly infers that Ezek. 4.9-15, where excrement defiles, is the relevant intertext (Olyan 1994: 202-203). (While not properly part of the Holiness Code, Ezekiel’s ideology has long been associated with the Holiness School.) A challenge to this view is the lack of any ban on anal sex with a woman.

Miller (2000; see also 2007) has offered an interesting twist to the argument about the proper placement of semen. Starting from a possible text critical clue in LXX Lev. 18.23 (which contains ‘seed’ where MT does not), he argues that the unifying theme of the sexual prohibitions in Lev. 18 (incestual or not) is that ‘the law code is concerned with where the semen is deposited rather than whether it is “wasted” or contacts life with death’ (Miller 2000: 402). To illustrate this, he offers the following translation of Lev. 18.19-23:

<sup>19</sup> Do not deposit semen in contact with menstrual fluid (another controlled body fluid).

<sup>20</sup> Do not deposit semen in a woman under contract to receive another man's semen (adultery).

<sup>21</sup> Do not give your semen/seed to idolatrous worship (Molek worship).

<sup>22</sup> Do not deposit semen in another semen producer (male homosexuality).

<sup>23</sup> Do not deposit (human) semen in an animal,

Nor should a woman attempt to have an animal deposit its semen in her.

On Molech worship, Miller (2000) cites 1 Sam. 1.11, 27 as corroborating evidence to interpret Lev. 18.21 as concerned with fertility vows to another deity (see further Hieke 2011; 2014: 679-88, 781-87; 2019; cf. Jub. 30.10 and b. Meg. 25a). As for Lev 18.22, he clarifies that the concern is probably not contact with excrement since anal sex with a woman is not prohibited (Miller 2000: 402).

The final proposal we will consider in this section comes from Dershowitz. In an article published in *Hebrew Bible and Ancient Israel* (2017)—and popularized through a *New York Times* op-ed (2018)—he ultimately agrees with those who think the linguistic content of Lev. 18.22/20.13 provides ‘an explicit blanket prohibition against MSS [male same-sex] relations’ (2017: 510). However, Dershowitz’s unique contribution comes in the form of a redaction-critical argument where he claims that the earlier textual version of Lev. 18 did *not* include v. 22 (or even vv. 18-23, for that matter), and in fact contained an *implicit acceptance* of ‘typical MSS couplings’ (2017: 510).

The argument goes like this: The core of Lev. 18 is found in vv. 7-17, and this section contains a rigid framework that sets it apart from the surrounding material. Each verse begins with the formulaic ‘the nakedness of X you shall not uncover’ (ערוֹת X לֹא תגִּלֶּה), where X is a member of the addressee’s kin. At first glance, this seems like a perfectly clear prohibition that amounts to *Don’t have sex with X*. The problem is that two verses do not fit the pattern:



18.7 The nakedness of your father and the nakedness of your mother you shall not uncover; *she is your mother, you shall not uncover her nakedness.*

18.14 The nakedness of your father's brother you shall not uncover; *do not approach his wife; she is your aunt.*

In 18.7, the first half reads as though it forbids sex with either of your parents—mother *and* father—but the second half awkwardly ‘clarifies’ so that it ends up referring to the mother alone. Strangely, the latter clause seems to remove a phantom prohibition against sexual intercourse with your father. In 18.14, a similar dynamic is at work. Here, the uncovering of your paternal uncle's nakedness cannot mean sexual intercourse with him since the second clause ‘clarifies’ that we are talking about his wife. Elsewhere in this section, ‘uncover the nakedness of X’ always amounts to ‘have sex with X’, a pattern strangely—and, it seems, unnecessarily—broken by 18.7, 14.

If we shelve the ‘clarification’ clauses for a moment and assume they might be secondary additions (Dershowitz is building on Elliger 1966), we are left with the following two forms of the proscriptions:

18.7 The nakedness of your father and the nakedness of your mother you shall not uncover. (i.e., sex with mother *and* father)

18.14 The nakedness of your father's brother you shall not uncover. (i.e., sex with paternal uncle)

Dershowitz then rightly asks, ‘What might compel an author to obscure, and effectively eliminate, two commandments forbidding incestuous relations?’ (2017: 514). The issue, he suggests, is a fear of a particular type of logical inference—namely, the exception proves the rule. In other words, by prohibiting a *specific type* of male same-sex intercourse, this potentially implies the existence of a general acceptance of other ‘typical’ (i.e., non-incestuous) male same-sex relationships. In order to address this unacceptable situation, a later scribe added a series of

clarification clauses throughout 18.7-17, along with the entire section of 18.18-23. In the final text, then, ‘Only heterosexual pairs were now included in the list of forbidden unions [18.7-17], and the categorical prohibitions of MSS [male same-sex] penetration no longer faced internal competition’ (Dershowitz 2017: 516; see also Hollenback 2019; Dershowitz 2019).

#### **IV. Three Unique Proposals**

Three scholars have offered unique hypotheses about Lev. 18.22/20.13 that stand out from the previous discussions. Töyräänvuori (2020) has recently proposed the novel view that male same-sex intercourse is not even addressed in these verses. Instead, the law is concerned about ambiguous paternity resulting from a male-male-female threesome. Stewart (2000; 2006), on the other hand, has argued that the laws are concerned only with male same-sex incest. Finally, Wells (2020) has proposed that the issue is rather that of prohibiting sexual intercourse with an ‘unavailable’ man—either due to his being married to a woman (i.e., adultery) or his being a younger male under the authority of another woman. We will take each in turn.

##### *a. Ambiguous Paternity Due to Male-Male-Female Threesome*

As hinted at in the title of her article, Töyräänvuori (2020) contends that homosexuality is not even present in these verses—it is literally a case of ‘mistaken identity’. Instead, she believes the law is addressing a sexual encounter of one woman with two men. If each man ejaculates in the woman and she eventually gives birth, this would be a case of ambiguous paternity, and Töyräänvuori understands this to be the central motivation behind the law.

Like several others, Töyräänvuori considers **משכבי אשה** to be the interpretive crux. She suggests that switching around the elements of the Hebrew sentence in Lev. 18.22 unveils

another possible reading: לא תשכב משכבי אשה את־זכר ‘You will not lay the beds of a woman with a man’, which she glosses as, ‘You will not have sex with a woman or women *in conjunction* with any man’. She further explains: ‘It is grammatically possible that the statute forbids a sexual practice in which two men share a single woman between them at the same time, a so-called *ménage à trois*’ (2020: 244). Note here that whereas a man bedding or marrying two (or more) women is taken in stride throughout the Pentateuch (e.g., Gen. 29: Jacob, Leah, and Rebecca), the inverse is taboo.

Right away we must deal with Lev. 20.13, which explicitly speaks of ‘the two of them’ (שניהם). If a threesome is the subject of our verses, why only implicate two people? Töyräänvuori is aware of this and offers the following response (2020: 245-46). First, she again moves the prepositional phrase to the end of the sentence to ‘clarify’ the situation and translates like so:

ואש אשר ישכב משכבי אשה את־זכר	And a man who lays the beds of a woman with a male,
תועבה עשו שניהם	the two [men] have made an abomination.
מות יומתו	Dying, they all will be put to death.
דמיהם במ	Their blood is upon them.

‘The two of them’, then, plausibly refers just to the men who ‘made an abomination’ inside the woman’s womb. ‘The motivation for this ban’, suggests Töyräänvuori, ‘might be due to an ancient understanding of biology in which it was the semen of a man, his seed, which gave life and the body of a mother that merely gestated this being created out of the man’s seed’ (2020: 245). The focus, then, is the mixture of semen from two different men in the same woman. We might ask, however, why the language of Lev. 18.22/20.13 is unique and lacks any mention of

‘seed’ (זרע). It seems that we should expect something like the idiom לא־יתן שכבתך לזרע when the explicit concern is the deposit of semen (Lev. 18.20, 23; cf. Lev. 15.18, 19.20; Num. 5.13).

Ancient embryogenesis may also lie behind the motivation of including this law in the Holiness Code. Without any definitive recourse to clarifying who fathered a child in the wake of a male-male-female threesome, we would have a case of questionable and/or ambiguous parentage. The children resulting from such situations would have unclear social roles, and ‘the statutes aim to prevent the creation of illicit and potentially abominable offspring. The creation of such offspring would be considered as disruptive to the social order, but ultimately it is questions of inheritance that the statutes aim to resolve’ (Töyräänvuori 2020: 249; see also 250). As noted by several other interpreters, such concerns would be quite relevant for the struggling Persian-period Yehudite community. This fits her broader argument about the common thread tying together the five non-incest prohibitions (Lev. 18.19-23), namely, to prevent the birth of offspring that would disrupt the social order through confusion (see also Nihan 2007: 437). Given that there are no laws against masturbation, anal sex, or even necrophilia, this might be easily explained because such acts do not run the risk of creating children. All the better to explain what Töyräänvuori perceives as a total lack of interest in male same-sex intercourse: ‘Acts that run the risk of creating new members to a society whose status is unclear from the moment of their conception are more dangerous to social order than what two autonomous subjects do consensually with their own bodies, especially given that the book of Leviticus contains instructions on cleaning the body from contact with seminal emissions’ (2020: 263).

#### *b. Male Same-Sex Incest*

Stewart first argued for this understanding of Lev. 18.22/20.13 in his unpublished dissertation (2000), but he has found a much wider audience through his rearticulation of the view in *The Queer Bible Commentary* (2006). This hypothesis has also been picked up and expounded by Lings (2009; 2013: 195-237; see also Milgrom 2000: 1786).

The issue comes back to the difference between the singular construct phrase **משכב זכר** 'lying of a male' and the plural of Lev. 18.22/20.13, **משכבי אשה** 'lyings of a woman'. Olyan (1994), as noted, acknowledged the difference but assumed there wasn't any significant distinction between the two forms. Stewart disagrees and points us to a text overlooked by Olyan which does not fit the latter's argument. In Genesis 49.4, Jacob says to Reuben,

Reckless like water, you will not excel,  
For you went up (onto) *the beds of your father* [**משכבי אביך**];  
then you defiled (them);  
you went up (onto) my couch.

This is a reference to Reuben's sexual activity with one of Jacob's wives, presumably Bilhah in Gen. 35. Olyan argued that **משכב זכר** describes the normal sexual experience of a man, 'vaginal penetration', and so **משכבי אשה** means 'vaginal receptivity'. For Olyan, the analogy with **משכב זכר** would seem to require this idiom to refer to what the woman experiences. However, **משכבי אביך** in Gen. 49.4 is *not* describing the typical sexual experience of a man, but incest with a female relative, and the parallelism with 'my couch' strongly suggests that the 'beds of your father' indicates what belongs to or is experienced by the father. The idiom '**משכבי X**' clearly seems to be a technical phrase, and Stewart notices that the gender of X may hold the key to interpretation. In Gen. 49.4, in order to describe 'incest with a female', we find the phrase 'lyings of your *father*', whereas in Lev. 18.22/20.13, in order to describe 'incest with a male' we have

‘lyings of a *woman*’. That is, the second element in the idiom indicates the opposite gender to the person with whom incest is committed. In Stewart’s words,

The lyings-of-a-woman still presumes the agency of a male but refers to an act with another male by a kind of literary gender play. Just as the ‘lyings-of-your-father’ refers to a usurpation of the father’s bed by the son, the ‘lyings-of-a-woman’ metonymically refer to a male as incestuous object—a metonym because elaboration of the incest category has been (primarily) in terms of female objects (Lev. 18.7-16) (Stewart 2006: 97).

A broader conclusion from these insights, argues Stewart, is that the singular **משכב** indicates licit sex, whereas the plural **משכבֵי** is a technical term indicating *illicit sex*. What is illicit? Incest, and in the particular case of Lev. 18.22, all the ‘male versions’ of prohibitions just enumerated (Stewart 2000: 74). It is a catch-all phrase, a sort of *mutatis mutandis*, tacked on ‘to make sure that the general prohibition against incest applies in all directions’ (Lings 2009: 245). Lings, drawing on Stewart, offers two ‘tentative’ retranslations: ‘You shall not lie with close relatives, whether male or female’; or ‘With a male relative you shall not engage in sexual relationships prohibited with female relatives’ (Lings 2009: 246). Ergo, the prohibitions apply to sex with father, son, and brother, as well as to grandfather-grandson, uncle-nephew, and stepfather-stepson, but *not* to male same-sex sexual intercourse in general (see also Stiebert 2016: 89-100; Kamionkowski 2018: 177-97; Hieke 2014: 689). We might mention here that the Pharisees, followed by the Rabbis, did not think Leviticus prohibited relations between paternal uncles and nieces. This was a point of conflict with the Qumran sect and the later Karaites, where uncle-niece marriage is explicitly forbidden (CD V, 9-11; 4QD<sup>e</sup> 2 ii 16; 1QHalakah<sup>a</sup> fr. 12; 11QT<sup>a</sup> LXVI, 15-17; see further Crawford 2003).

*c. Sexual Intercourse with an ‘Unavailable’ Man*

Wells (2020) agrees with those who think the interpretive key is the *plural* aspect of the idiom **משכבי אשה**. Ultimately, he concludes that Lev. 18.22/20.13 prohibits sexual intercourse with an ‘unavailable’ man—either due to his being married to a woman (adultery) or his being a younger male under the authority of another woman.

Wells begins by noting two missing elements in Lev. 18.22/20.13 that speak against most other interpretations. First, neither 18.22 nor 20.13 qualifies the ‘male’ (**זכר**) with ‘all/every’ (**כל**). This is significant because the pattern elsewhere is to identify the illicit sexual partner, typically preceded by another word (e.g., ‘nakedness’) or a preposition, and **אשה** is *always* qualified so as to limit the prohibition to a certain woman or situation. Given this pattern, every illicit sexual partner in Lev. 18 is restrictively qualified *unless* we find **כל** or a similar all-encompassing reference (e.g., 18.23). Since we lack any such indicator in 18.22 or 20.13, we should infer that the prohibition is similarly restricted to a particular person or situation. For Wells, this qualifier is **משכבי אשה**.

The second missing element is best appreciated by considering the almost universal choice to translate **משכבי אשה** as ‘You shall not lie *like/as one lies with a woman*’. Such a rendering implies analogy, but we are missing a Hebrew particle of comparison (a similar concern in Lings 2009, 2013). Wells rightly notes that Hebrew is quite capable of this type of expression, but such a translation would only be defensible if the Hebrew had either **כְּ** (typically followed by an infinitive construct, or possibly a participial form) or **כַּאֲשֶׁר** (followed by a finite verb). What we actually have is **לא תשכב משכבי אשה**. Given these two missing elements, we should consider another route of analysis.

Wells insists that ‘the basic denotation of **משכב**, in all of its uses, should be understood as “bed(s)” (i.e., place[s] of lying down), and it is not necessary to posit the separate meaning of

“act of lying down” (2020: 130). He further notes that, uniquely, *HALOT* does not list ‘act of lying down’ as a possible meaning under **משכב**, and Lev. 18.22 and 20.13 are glossed with ‘marriage bed’. Most scholars agree that the phrase ‘beds of a woman’ is an adverbial accusative of the intransitive verb **שכב**, but there are two types of adverbial accusative. First would be an adverbial accusative of *manner*, denoting the manner or mode of the act of lying. Another possibility, however, is to understand it as an adverbial accusative of *location*, answering the question, ‘Where?’ (GKC §118d).

Outside of Lev. 18.22/20.13, there are eleven other uses of the verb **שכב** with an adverbial accusative. In eight of these, it is clearly an adverbial accusative of location (2 Sam. 4.5, 11.9, 12.16, 13.31; Mic. 7.5; Ps. 88.6; Ruth 3.8, 14). Wells draws an analogy to the modern English idiom, ‘I found the two of them in bed together’ (2020: 129). The remaining three are Priestly texts with an adverbial accusative of manner (Lev. 15.18; 19.20; Num. 5.13), namely, **שכבת זרע** ‘a lying of seed’ (i.e., seminal emission). ‘This use’, says Wells, ‘shows that the priestly authors...already had an expression at hand that they could use to convey the sexual nature of an act, and this expression does not occur in [Lev. 18.22 and 20.13]’ (2020: 129). Since the surrounding context of both verses is transparently about sexual pairings, including an adverbial accusative of manner in 18.22 and 20.13 to specify its sexual nature would be redundant. In a criticism of Walsh’s argument for an adverbial accusative of manner, Wells contends that in order to specify the penetrated partner as the subject of the law we would naturally expect a different formulation, something like: **‘זכר אשר ישכב איש אתו’** (‘As for) a male with whom a man lies...’ As it happens, such a formulation is found in Lev. 15.18: **‘ואשה אשר ישכב איש אתה’** (‘As for) a woman with whom a man lies...’ He bolsters his linguistic critique by noting that Hebrew cognate accusatives follow a different derived pattern than what



we find in Lev. 18.22/20.13. If a cognate accusative were included that specified the *act* rather than the *location*, it would be formed differently (Wells 2020: 130-32). For example, with the gram זבח we have both מזבח (*place*: ‘altar’) and זָבַח (*cognate accusative*: ‘sacrifice’). So, in Lev. 18.22/20.13 we would expect the pattern משכב > שכב (*place*: ‘bed’) and שָׁכַבָּה (*cognate accusative*: ‘lying down’).

If we accept the argument that we are dealing with an intransitive verb governing an adverbial accusative of location, we can offer a relatively straightforward translation: ‘And with a male you shall not lie *on the beds of a woman*; it is an abomination’. While linguistically relatively transparent, the connotative meaning is opaque. Why is ‘lying on the beds of a woman’ worthy of censure? Wells thinks the clue may be found by noting the particular plural form of משכב. A number of Classical Hebrew nouns may take different plural forms, *-ôt* or *-îm*. Among the possible reasons for this, some nouns differ semantically depending on which plural form they exhibit (see Tubul 2007; cited in Wells 2020: 132). As an example, Wells mentions חצר, where חצרות denotes the outside area around a house while חצרים denotes small, unwalled settlements. The argument here is that the plural ‘beds’ in Lev. 18.22/20.13 fits this broader pattern of semantic difference between plural forms. The normal plural form of משכב to connote ‘beds’ is משכבות, but the construct plural in משכבי אשה corresponds to the alternative form משכבים\*. Besides Lev. 18.22/20.13, there are very few other ancient Hebrew texts with this masculine plural form (cf. 4Q184 fr. 1.6), and Wells points to two in particular: Genesis 49.4 (neglected by Olyan but mentioned by Stewart and Lings) and 1QSa I, 8-10 (neglected by Stewart and Lings but mentioned by Olyan):

Reckless like water, you will not excel,

For you went up (onto) *the beds of your father* (משכבי אביך);

then you defiled (them);

you went up (onto) *my couch* (יצועי). (Gen. 49.4)

At the age of twenty yea[rs, he will be transferred to] those appointed to enter the lot among his clan and join the holy congregation. *He will not a[pproach] a woman to know her with respect to the beds of a male* (ולוא י[קרב] אל אשה לדעתה למשכבי זכר) until he is fully twenty years old and knows [good] and evil. (1QSa I, 8-10; see Martínez and Tigchelaar 1999: 101)

Wells concludes that these four occurrences (Gen. 49.4; Lev. 18.22, 20.13; 1QSa I, 10) of ‘X משכבי’ all refer to illicit sex (2020: 139). In each case the noun related to the plural construct represents the opposite gender of the sexual partner. This usage seems to undermine Olyan’s argument about what the idiom presumably means in Numbers and Judges since in this case it treats ‘beds of a male’ as what the male experiences. Inspired by Stewart (see Wells 2020: 138 n. 50), Wells asks us to consider whether the *-îm/ê* plural form of משכב is distinct from both the singular and plural *-ôl* forms and specifically connotes illicit sex. But whereas Stewart concluded that incest is the illicit act, Wells seeks to provide an interpretation that can incorporate both Gen. 49.4 and 1QSa I, 10, the latter of which is clearly not about incest. This is an important point, but Wells’s discussion muddies things a bit by incorrectly describing the idiom in 1QSa I, 10 as connoting an inherently illicit sexual act: The act of ‘approaching a woman to know her with respect to the beds of a male’ would only be illicit if performed before the young man is twenty, but the implication is that this action would otherwise be licit. Regardless, the more salient point is Wells’s broader conclusion, which does not require the assumption that the act is necessarily illicit: ‘In this way, I arrive at my proposal that משכבים/משכבי\* is an abstract plural that communicates the notion of someone’s lying-down area or zone. We might even say that *it stands for an individual’s sexual domain*’ (Wells 2020: 140; emphasis added).

When it comes to sexual domain, we can think of it in two ways. First, Gen. 49.4 reflects the ‘ownership domain’, referring to Jacob’s exclusive right to have sex with those in his domain. This is expressed through the synonymous parallelism of ‘beds of your father’ (משכבי אבִיךָ) and ‘my couch’ (יִצוּעִי). The second is the guardianship domain as seen in 1QSa I, 10. ‘Just as the משכבים\* mentioned in Genesis 49 did not belong to Reuben or to the woman but to Jacob, so the משכבים\* here in 1QSa belong neither to the young man nor to the woman with whom he might sleep but to another male...The young man would thus be trespassing in someone else’s sexual domain. The woman in question is restricted territory, and access to this territory is governed by a male’ (Wells 2020: 143). In the context of 1QSa, the authoritative male in question is probably the woman’s father, brother, or another male relative (on sexual guardianship, see Joseph 2016). But since the text focuses on the young man’s age as the defining feature of whether the act is licit or illicit, it is uncertain whether this analysis holds. Wells seems to be arguing by implication that once the young man is twenty years old the issue of sexual guardianship becomes moot.

In Lev. 18.22/20.13 we would be dealing with a male under the domain of a woman (משכבי אשה). Is it not anachronistic to assume that the text is concerned about violating the sexual domain of a woman? Generally, in Israelite law it is impossible for a man to commit adultery against his wife, and positing a situation where a man has sexual relations with a woman’s husband—violating *her* claim over him—may strain plausibility. Wells admits this is a legitimate challenge, but points to three considerations that he feels maintains its viability. First, verses like Lev. 20.17, 18 may be read as indicating sexual agency or proactive participation of particular women. For Wells, this indicates that H’s authors may at the very least have been interested in ‘taking women into account as they construct their rules’, though he clarifies that

this is less of an egalitarian move than a concern about purity (Wells 2020: 145, 146 n. 75; see also Shectman 2009: 48-49). Second, in both Lev. 18 and 20, ‘it is the relationship that some individuals have with a woman rather than a man that renders them unavailable sexually’ (Wells 2020: 145; e.g., Lev. 18.13, 17, 18; 20.14, 19). Finally, comparative evidence suggests that it was not unheard of for women, either through contracts or established law, to be able to have some measure of influence over their husband’s sexual activity (Wells 2020: 146). Ultimately, then, Wells concludes that the prohibitions in Lev. 18.22 and 20.13 specifically forbid sex with ‘unavailable’ men—whether because they are married (adultery), or because they are unmarried and for various reasons fall under the guardianship of a Judean woman. This would include Stewart’s argument that male same-sex incest is in view, but Wells goes further by including all married men as well as unmarried males (זכר) (e.g., stepson). As for who is left for *licit* male same-sex activity, the implication would be that male slaves, foreign travelers (but not a resident foreigner, גר), and possibly male prostitutes were permissible (Wells 2020: 147-48). The primary drivers include purity issues, but more pertinent are concerns to maintain social cohesion while ensuring the community behaves differently from certain groups of foreigners (Lipka 2006: 39). Since there is no other legal material in the Pentateuch that comes close to speaking of such concerns, Wells also thinks the specific regulations found in Lev. 18.22 and 20.13, along with a handful of others, were ‘comparatively new’ additions (Wells 2020: 154-56).

## **V. Conclusion**

The sheer variety of proposals about Lev. 18.22/20.13 should lead us to emphasize the tentative nature of any hypothesis. While we might find some arguments more compelling than others, all are ultimately more suggestive than decisive. At present, no clear consensus exists, but research

trends reflect a growing resistance to understanding the law as a blanket condemnation of ‘homosexuality’. As the survey has shown, many now find this to be an unacceptable category error and opt for alternative proposals related to issues of power and social class, ancient conceptions of appropriate gender roles, and maintaining the proper boundaries between these categories.

Importantly, none of these treatments, however ‘scholarly’ and ‘objectively’ they might be framed, exist apart from the ongoing fight for LGBTI+ rights (see e.g., Hieke 2015; Römer and Bonjour 2016; Kamionkowski 2018: 177-97). Though the precise nature of the relationship between religious ideology and homophobia is a fraught and muddled question, the disturbing family resemblance to the Bible’s so-called ‘clobber texts’ (traditionally: Gen. 19; Lev. 18.22/20.13; Rom. 1.26; 1 Cor. 6.9; 1 Tim. 1.10; Jude 7; cf. Stiebert 2016: 90 on Qoh. 4.11) should alarm anyone who considers the Bible sacred writ. A number of scholars working on this material now note that we are hitting up against the limits of the historical critical method (Stone 2001; Nissinen 2010). ‘We *must* move beyond the explication of texts’, urged Seow in 1996. ‘The issue of homosexuality is not merely an exegetical one—that is, it is not merely a question of what the ancient texts *meant*. It is, more importantly, a hermeneutical issue, a question of how we understand the texts and appropriate them for our specific contexts’ (Seow 1996: x). While this continues to be a *desideratum* for future research, a number of scholars have already taken up this challenge (e.g., Ackerman 2005; Martin 2006; Hügel 2009: 467-97; Caron 2009; Hornsby and Stone 2011; Harding 2014; Mathias 2014; Perry 2015; Bethmont and Gross 2017; Perry and McElroy 2020). Of course, one may very well be queer or an ally *and* come to a sober historical conclusion that Lev. 18.22/20.13 represents an ancient ban on ‘homosexuality’. Regardless, there

is no hermeneutical vantage from which we can treat these ‘clobber texts’ without profound implications for marginalized communities.

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